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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Pascal Paganon

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07/08/2009

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EXAMINER

TEMPLETON, CHRISTOPHER L

ART UNIT

PAPER NUMBER

4138

MAIL DATE

DELIVERY MODE

07/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/559,200	Applicant(s) PAGANON, PASCAL	
	Examiner CHRISTOPHER L. TEMPLETON	Art Unit 4138	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/2/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 7 recites the limitation "said small opening" in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1- 8, 10 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benchetrit (U.S. Publication No. 2005/0119672) in view of Bachmann (U.S. Patent No. 7,060,080).
6. As to claim 1 and 7, Benchetrit (U.S. Publication No. 2005/0119672) discloses an implantable surgical ring 1 (Figure 1) capable of surrounding one or more organs having a pouch or a duct, in order to modify the section of the passage in the organ, said ring 1 being in the form of a flexible strap 2 extending between first and second ends 16, 15 (Figure 1). The flexible strap 2 is provided towards its first and second ends 16,15 with

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respective male 6 and female 5 closure elements arranged to cooperate in such a manner that the flexible strap forms a closed loop (Figure 2), the female closure element 5 permanently forming a closed collar. Benchetrit also discloses the surgical ring 1 wherein the female element 5, 5A comprises a tube (ring) (paragraph 59), said tube having a side wall defining a small opening (Figure 3; paragraph 59). Benchetrit does not expressly disclose the female element including a structural discontinuity in which the deformability of the female element is greater than the deformability of the remainder of the female element. Benchetrit also does not expressly disclose the side wall being split by at least a first slot such that the first slot forms a structural discontinuity. Bachmann teaches a female element with a structural discontinuity 19 (Figure 1) in which the deformability of the female element is greater than the deformability of the remainder to the female element (Figure 1) for the purpose receiving a larger male element end for better securement of the surgical band and to prevent any shifting of the male element in relation to the female element (column 8, lines 17-22). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the surgical ring of Benchetrit to include the structural discontinuity, as taught by Bachmann, in order to receive a larger male element for the purpose of better securing the surgical band and prevent any shifting between the male and female elements.

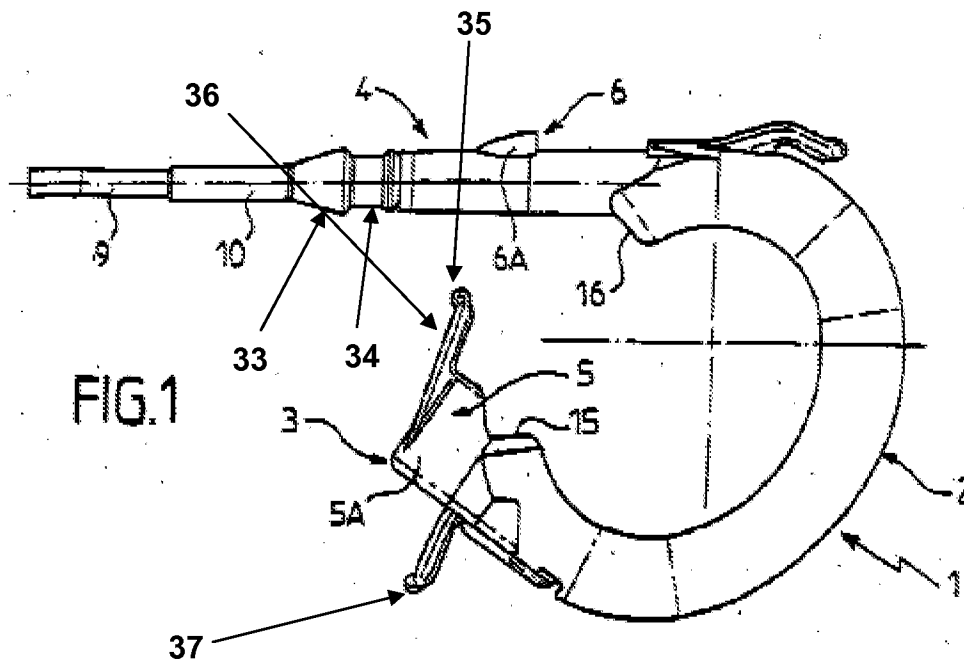
7. As to claim 2, Benchetrit discloses the surgical ring 1 wherein the female element 5 is arranged to pass reversibly (paragraph 60) between the closure configuration (Figure 2) and the passage configuration (Figure 1).

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8. As to claim 3, Benchetrit discloses the surgical ring wherein the ring includes a locking/unlocking means 6A,5A for locking/unlocking the female closure element in its closure configuration (Figures 2 and 3; paragraphs 46 and 59).

9. As to claim 4, Benchetrit, as modified by Bachmann, discloses the surgical ring wherein the locking/unlocking means 6A/5A are capable to vary between a locking position (Figure 2) in which they inhibit the deformability of the structural discontinuity and an unlocking position (Figure 1) in which they substantially release the female closure element from any stress.

10. As to claim 5, Benchetrit discloses the surgical ring wherein the male element is comprised of at least a first 33 (Figure 1 below) and second 4 portion with the section of the first portion 33 (Figure 1 below) being substantially greater than the section of the second portion 4, said male element 6 being designed to have its first portion threaded through the female element 5, 5A (paragraph 59) until the female element cooperates with the second portion 4, which second portion 4 is interposed between the first portion 33 (Figure 1 below) and the first end 16 of the flexible strap 2.



11. As to claim 6, Benchetrit discloses the surgical ring wherein the male element 6 is substantially cylindrical in shape (Figure 1), said cylinder being provided with a groove 34 (Figure 1 above) set back from its periphery, said groove forming the second portion 4.

12. As to claim 8, Benchetrit discloses the surgical ring provided with a first pull-tab (grips) 37 (Figure 1 above) is capable of making it easier to move the male element and the tube 5 towards each other into cooperation and/or easier to separate the male and female elements and to move them apart (paragraph 46).

13. As to claim 10, Benchetrit discloses the surgical ring wherein the first pull-tab 37 (Figure 1 above) extends in a direction substantially parallel to the longitudinal direction of the side wall of the tube 5 (Figures 1-3).

14. As to claims 13 and 14, Benchetrit discloses the surgical ring except for the ring further being comprised of a system for reversibly controlling variation in its internal

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perimeter, which is comprised of an elongate flexible element inserted longitudinally and slidably in the material forming the flexible strap substantially between its first and second ends so as to define a stationary portion secured to the second end and a free portion functionary associated with an actuator mounted on the ring in such a manner that the actuator can cause the elongate flexible element to move reversibly in translation. Benchetrit also does not disclose the actuator arranged on the flexible strap in such a manner as to constitute and/or be included in the first portion of the male element. Bachmann teaches a surgical ring comprised of a system for reversibly controlling variation in its internal perimeter, which is comprised of an elongate flexible element 19 inserted longitudinally and slidably in the material forming the flexible strap 2 substantially between its first and second ends 4, 3 so as to define a stationary portion 22 secured to the second end 3 and a free portion 21 functionary associated with an actuator 23 (Figure 5) mounted on the ring (Figure 2) in such a manner that the actuator can cause the elongate flexible element to move reversibly in translation so as to obtain an associated variation in the internal perimeter of the ring (column 9, lines 4-20). Bachmann also teaches the surgical ring wherein the actuator 23 is arranged on the flexible strap 2 in such a manner as to constitute and/or be included in the first portion of the male element (Figure 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the compression mechanism of Benchetrit to include the system of a flexible element and an actuator, as taught by Bachmann, for the purpose of obtaining a variation in the internal perimeter of the ring, thus allowing better control of restricting a hollow organ.

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15. As to claims 15 and 16, Benchetrit discloses a surgical ring which is a gastric ring for implanting around the stomach (abstract). Benchetrit also discloses a surgical ring formed by a ring capable for implanting around the bladder (Figure 2).

16. As to claim 17, Benchetrit discloses the surgical ring wherein the ring includes a locking/unlocking means 6A/5A for locking/unlocking the female closure element in its closure configuration (Figure 2).

17. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benchetrit (U.S. Publication No. 2005/0119672) in view of Bachmann (U.S. Patent No. 7,060,080) and further in view of Jarsaillon et al (U.S. Publication No. 2008/0183196).

18. As to claim 11, Benchetrit discloses the surgical ring wherein the tube 5 extends longitudinally between first and second opposite faces 5 and 5A, the male element 6 being threaded through the female element from the first face 5 towards the second face 5A, a locking/unlocking means 6A/5A comprising a flexible band 36 (Figure 1 above) attached locally to the flexible strap 2 and/or to the tube 5 in such a manner that said flexible band extends substantially in a plane situated in front of the second face 5A (Figure 1 above) and is capable of being brought by elastic deformation into cooperation with the tube 5 so as to lock the tube in the closure configuration. Benchetrit, as modified by Bachmann, does not expressly disclose a latching ridge situated on the periphery of the tube and formed by two half-ridges positioned on either side of the first

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slot. Jarsaillon teaches ridges 6 on the periphery of a tube (Figure 2B) for fastening the gastric ring in order to maintain the band 2 (Figure 1) in the form of a ring (paragraph 47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the periphery of the tube of Benchetrit to include the latching ridges as taught by Jarsaillon in order to fasten the gastric ring and maintain the band in the form of a ring.

19. As to claim 12, Benchetrit, as modified by Bachmann and Jarsaillon, discloses the surgical ring provided with a second pull-tab 35 (Figure 1 above) which is capable to enable the band 36 to be brought up to and cooperate with the latching ridge and/or to enable the band to be separated from the ridge and moved away therefrom.

20.

21. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benchetrit (U.S. Publication No. 2005/0119672) in view of Bachmann (U.S. Patent No. 7,060,080) and further in view of Vincent et al (U.S. Patent No. 5,658,298).

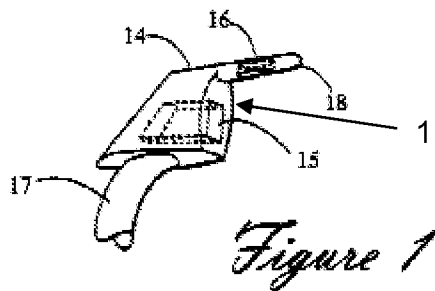
22. As to claim 9, Benchetrit, as modified by Bachmann, discloses the surgical ring wherein the first pull-tab 35 (Figure 1 above) extends between an attachment end 3 which is secured to the tube 5 and a free end 35 (Figure 1 above) for grasping.

Benchetrit does not expressly disclose the first pull tab being split longitudinally by a second slot over a fraction only of its length starting from its attachment end and said first pull-tab being attached to the tube in the vicinity of the first slot such that said first slot is extended by the second slot and first and second slots forming a single resultant slot. Vincent teaches a pull tab 18 being split longitudinally by a second slot 16 over a

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fraction only of its length starting from its attachment end 1 (Figure 1 below) for use with a tool. The second slot within the pull tab would allow it to be within the vicinity of the first slot of the surgical ring as modified with Bachmann. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pull tab of Benchetrit to include the second slot, as taught by Vincent, in order to use a tool for engaging the pull tab for inserting it through the small opening.

23. As to claim 18, Benchetrit discloses the first pull-tab 37 (Figure 1 above) which extends in a direction substantially parallel to the longitudinal direction of the side wall of the tube (Figure 1 above).



Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Birk (WO 2004/019671), Anderson et al (U.S. Patent No. 6,074,341), Robert (U.S. Patent No. 6,511,490) and Longobardi (U.S. Patent No. 6,966,875) all disclose gastric bands. Boustani et al (U.S. Patent No. 7,288,064), Gotz (EP 1319371) and Battistella et al (U.S. Patent No. 5,526,555) all disclose ridges.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER L. TEMPLETON whose telephone

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number is (571)270-1477. The examiner can normally be reached on Monday through Friday, 8:00a.m.-5:00 p.m., EST (alternate Fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melba Bumgarner can be reached on (571)272-4709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. L. T./
Examiner, Art Unit 4138

/Quang D. Thanh/
Supervisory Patent Examiner, Art
Unit 4138